

REMARKS

This Office Action Response is being submitted in reply to the Final Office Action dated May 15, 2007. It is noted that this Office Action Response is being submitted on Monday, July 16, 2007 within the 2-month period after the date of the Final Office Action. Claims 1, 3, 7-23, and 35-27 are presented herein for examination. Claims 1 and 11 have been amended herein to correct a typographical error. No new matter has been added.

Claim Rejections – 35 USC §103

The Examiner rejected claims 1, 3, 8, 10-12, 14-15, 17-23, and 25-27 under 35 USC § 103(a) as being unpatentable over Pellon (5,392,042) in view of Khlat et al (6,678,340). The Examiner further rejected claims 7, 9, 13 and 16 under 35 USC § 103(a) as being unpatentable over Pellon in view of Khlat and further in view of Ko et al. (6,577,674).

The rejection is traversed since the Examiner has failed to make a *prima facie* obviousness rejection, so the rejection should be withdrawn. Contrary to the Examiner's assertion, the patents to Pellon, Khlat, and Ko do not disclose all of the elements as claimed in independent claims 1, 11, 19, and 25, in particular "an amplitude shift key modulator" as recited in claims 1 and 11, or "amplitude shift key modulating" as recited in claims 19 and 25. In support of the rejection, the Examiner cited element 218 of Fig. 2a, Fig. 5, and Fig. 7a of Pellon, which is a digital-to-analog converter as disclosed by Pellon. As an example, Fig. 2a of Pellon is reproduced, below:



wherein the signal generator comprises a amplitude (phase) shift key modulator (Fig. 2a, element 218 & Fig. 5, element 218 & Fig. 7a, element 218) {Interpretation: as the ASC is a 1-bit converter the ASK becomes a BPSK modulator. Furthermore, the functionality of a DAC is the same as the ASK as disclosed in the instant specification}.

The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and **not based on applicant's disclosure**. Emphasis added. (See MPEP § 2142, page 2100-125 "Establishing a Prima Facie Case of Obviousness").

Second, the Examiner's statement is merely conclusory but not evidentiary and not based on any cited reference or other evidence that is not based on the Applicant's disclosure, therefore the conclusion of the Examiner's statement is hereby traversed. It is clear and it is not disputed that **Pellon does not teach or disclose an ASK modulator**. In fact, the Examiner has not cited any reference that teaches or discloses an ASK modulator or ASK modulating as recited in claims 1,

11, 19, and 25. As a result, the Examiner has failed to establish a *prima facie* rejection of obviousness since the cited references do not teach or disclose all of the elements recited in the Applicant's claims. The Examiner is kindly reminded that:

Finally, **the prior art reference (or references when combined) must teach or suggest all the claim limitations.** The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and **not based in applicant's disclosure.** Emphasis added. (See MPEP § 2142, page 2100-125 "Establishing a Prima Facie Case of Obviousness").

Furthermore, the Examiner has provided no evidentiary support of the "Interpretation" statement and has cited no specific passage of any cited reference that would support the Examiner's argument that "the functionality of a DAC is the same as the ASK as disclosed in the instant specification". Therefore, there is no evidence on the record that would support the Examiner's reasons for the rejection. The Examiner is hereby requested to either set forth facts supporting the Examiner's interpretation in accordance with 37 CFR (d)(2) in an Examiner's affidavit or to cite a specific passage of a cited reference supporting the Examiner's interpretation. Otherwise, the rejection should be withdrawn as *prima facie* insufficient.

CONCLUSION

In view of the amendments and the remarks above, Assignee submits that this application is in condition for allowance. Entry of the amendments and allowance of the application are respectfully solicited. The Examiner is kindly invited to telephone the undersigned at (303) 495-3700 to facilitate allowance of the application.

Respectfully submitted,

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Date: July 16, 2007

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